

FILED

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CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

5 A NEW WAY OF LIFE REENTRY PROJECT  
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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 ANDRES REGALADO,  
16 individually and on behalf of the  
17 putative classes,

18 Plaintiff,

19 vs.

20 RYDER INTEGRATED LOGISTICS,  
21 INC., a Delaware corporation, and  
22 DOES 1-10 inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. 12-cv-05737-DSF (FFM<sub>x</sub>)

THIRD AMENDED CLASS  
ACTION COMPLAINT FOR  
VIOLATIONS OF THE FAIR  
CREDIT REPORTING ACT, 15  
U.S.C. § 1681 *et seq.*

JURY TRIAL DEMANDED

COPY

1 Plaintiff ANDRES REGALADO (“Plaintiff”), on behalf of himself and all  
 2 similarly situated individuals, complains and alleges against Defendant RYDER  
 3 INTEGRATED LOGISTICS, INC. (“Ryder”) as follows:

4 **NATURE OF THE ACTION**

5 1. Ninety-two percent of all employers, including Ryder, routinely obtain  
 6 consumer reports on prospective and existing employees. Employers, including  
 7 Ryder, frequently rely on such information as a basis for adverse employment  
 8 action, e.g., denial of employment.<sup>1</sup>

9 2. Background check companies, or consumer reporting agencies,  
 10 provide consumer reports based on criminal history data maintained in their own  
 11 proprietary databases. These companies compile information from various sources  
 12 including state and federal criminal record repositories.

13 3. Many large-scale employers, including Ryder, rely on consumer  
 14 reporting agencies to determine job applicants’ eligibility for employment. This  
 15 determination is made without the employer independently reviewing the  
 16 applicant’s consumer report, and without providing the employee with an  
 17 opportunity to dispute the information contained therein.

18 4. Plaintiff was conditionally hired by Ryder as a truck driver pending,  
 19 *inter alia*, a successful background check.

20 5. He was subsequently rejected from employment based solely on a  
 21 consumer reporting agency’s notation that the criminal background information  
 22 contained in Plaintiff’s background check report fell outside of “pre-determined  
 23 criteria.”

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24  
 25 <sup>1</sup> EEOC Enforcement Guidance, *Enforcement Guidance on the Consideration of*  
 26 *Arrest and Conviction Records in Employment Decisions Under Title VII of the*  
 27 *Civil Rights Act of 1964, as amended*, 42 U.S.C. §2000 *et seq.* (April 25, 2012), p. 6  
 28 ([http://www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf) (last visited May 31, 2012)).

1           6.     The actual criminal history information that formed the basis for the  
2 conclusion that Plaintiff fell “outside of pre-determined criteria” was a six-year-old  
3 conviction for violating an ordinance relating to operating a business without a  
4 license.

5           7.     The actual criminal history information was never provided to Ryder  
6 by the consumer reporting agency. Nor was it provided to Plaintiff.

7           8.     Plaintiff was never provided with any pre-adverse action notice from  
8 Ryder. Instead, he found out that Ryder had decided not to employ him only after  
9 he initiated a phone call to Ryder’s human resource department after a long period  
10 of silence following the conditional offer.

11          9.     The Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.*,  
12 imposes certain duties on users of consumer reports, including employers.

13          10.    Under 15 U.S.C. § 1681b(b)(3)(A), *before* taking any adverse  
14 employment action based in whole or in part on a consumer report, the employer  
15 must provide to the job applicant:

16               a. a copy of the consumer report; and

17               b. a description in writing of the rights of the consumer under the  
18 FCRA.

19          11.    The reasons for the “pre-adverse action notice” requirement in  
20 employment situations are to alert the job applicant that he is about to be rejected  
21 based on the content of a report, and to give him an opportunity to challenge the  
22 accuracy or relevancy of the information with the credit reporting agency or the  
23 employer before the job prospect is lost.

24          12.    Congress recognizes that these rights are extremely important to the  
25 consumer and help “to insure that consumer reporting agencies exercise their *grave*  
26 *responsibilities* with fairness, impartiality, and a respect for the consumer’s right to  
27 privacy.” 15 U.S.C. §1681(a)(4) (emphasis added).  
28

1           13. The pre-adverse action notice requirement is unqualified. “Employers  
2 must comply with the pre-adverse action disclosure requirement even where the  
3 information contained in the consumer report (such as a criminal record) would  
4 automatically disqualify the individual from employment or lead to an adverse  
5 employment action.” FTC, *40 years of Experience with the Fair Credit Reporting*  
6 *Act* (July 2011) p. 53.

7           14. This requirement makes sense because even where the applicant was  
8 justly denied employment, he would be informed that his criminal history was a  
9 factor in the employer’s adverse employment decision, and would be motivated to  
10 seek various state remedies to expunge his criminal records. In California, this is  
11 called a dismissal pursuant to Penal Code § 1203.4.

12           15. To ensure knowing compliance with FCRA, Congress further requires  
13 that before any consumer reporting agency may provide consumer reports on an  
14 applicant, the reporting agency must have obtained a certification from the  
15 employer that it will comply with 15 U.S.C. § 1681b(b)(3) by providing the  
16 consumer with a pre-adverse action notice whenever the employer decides to take  
17 adverse action based in whole or in part on the consumer report. 15 U.S.C.  
18 §1681b(b)(1)(A).

19           16. Ryder knowingly, voluntarily, and with the assistance of its counsel,  
20 executed a certification providing that it would comply with various provisions of  
21 the FCRA, including providing a pre-adverse notice, whenever adverse action was  
22 contemplated or taken based in whole or in part on information contained in a  
23 consumer report.

24           17. Despite its certification, Ryder knowingly violated 15 U.S.C. §  
25 1681b(b)(3) by failing to provide its job applicants and employees with pre-adverse  
26 action notices.

1           18. Based on these violations, Plaintiff asserts FCRA claims against Ryder  
2 on behalf of himself and those similarly situated for Ryder's intentional failure to  
3 provide the notices as described above.

4                           **JURISDICTION AND VENUE**

5           19. Jurisdiction of this Court arises under 15 U.S.C. § 1681p and 28  
6 U.S.C. § 1331.

7           20. Venue lies properly in this district pursuant to 28 U.S.C. § 1391(b)(2).  
8 Plaintiff resides in this district, the wrongs alleged herein occurred in this district,  
9 and Defendant regularly conducts business in this district.

10                           **THE PARTIES**

11           21. Plaintiff ANDRES REGALADO is, and at all times relevant hereto  
12 was, an individual over the age of 18 and a resident of Los Angeles County,  
13 California.

14           22. Plaintiff is a consumer as defined by 15 U.S.C. § 1681a(c) because he  
15 is an individual.

16           23. Defendant RYDER INTEGRATED LOGISTICS, INC. is a Delaware  
17 corporation that conducts business throughout the United States, including in Los  
18 Angeles County, California. Ryder has its headquarters and principal place of  
19 business in Miami, Florida.

20           24. At all times pertinent hereto, Ryder was a user of consumer reports and  
21 is subject to regulation under 15 U.S.C. § 1681b.

22                           **FACTUAL ALLEGATIONS**

23           25. In 2005, Plaintiff was convicted of a misdemeanor violation of  
24 Torrance Municipal Code, Division 3, Chapter 1, Article 3, section 31.3.1,  
25 "Carrying on Business Without a License," because he was hired by an unlicensed  
26 contractor to paint address numbers on a street curb.

27           26. Six years later, on or about April 28, 2011, Plaintiff applied for work  
28 as a truck driver with Ryder. He was interviewed in person and contingently hired

1 the following day pending the successful completion of a background check, a DOT  
2 pre-employment physical, a road test, and a post-offer drug screening test.

3 27. Plaintiff successfully completed and/or passed all conditions except the  
4 background check.

5 28. On or about April 29, 2011, Ryder sent a request for a background  
6 check on Plaintiff to American Background Information Services (“ABI”).

7 29. On or about May 12, 2011, Ryder received a two-page summary report  
8 entitled “Risk Score Report” from ABI characterizing the results of Plaintiff’s  
9 background ground screening as: “Yellow – Information returned regarding the  
10 above referenced applicant falls outside the predetermined criteria.” “Reason:  
11 Criminal.” A copy of the summary adjudication is attached as Exhibit 1.

12 30. Relying solely on this information, Ryder determined that Plaintiff had  
13 “FAILED CRIMINAL.” (*See* Exhibit 2). Accordingly, Ryder noted that Plaintiff  
14 had not met all of his required conditions for employment and denied him  
15 employment based on the information contained in the consumer report.

16 31. Ryder did not issue a notice to Plaintiff prior to the adverse action.

17 32. Plaintiff never received a pre-adverse action notice from Ryder.

18 33. Plaintiff never received a copy of his background check report from  
19 Ryder.

20 34. Because Ryder did not provide Plaintiff with a copy of the consumer  
21 report that it relied upon, and did not provide Plaintiff with an explanation for its  
22 decision to deny employment, Plaintiff did not know why he was denied  
23 employment until October 24, 2011—almost five months following his denial of  
24 employment. At that time, Plaintiff learned that the basis for the denial was his  
25 conviction for operating a business without a license.

26 35. Plaintiff was deprived of any opportunity to review the information in  
27 the consumer report and discuss it with his employer before Ryder made the  
28 decision not to hire him.

1           36. During the relevant period, ABI provided, and continues to provide,  
2 consumer reports to Ryder under a service agreement. Under the service  
3 agreement, Ryder certified to ABI that it would comply with the FCRA, including  
4 provisions specifically and directly relating to its duty to provide pre-adverse action  
5 notices to its job applicants and employees.

6           37. Ryder knowingly, voluntarily, and with the assistance of its counsel  
7 signed the service agreement including the above-mentioned certification.

8           38. Therefore, Ryder is well-aware of its obligations to provide pre-  
9 adverse action notices to its job applicants and employees whenever it decides to  
10 take adverse action. Nevertheless, Ryder neither directly provides such notices nor  
11 contracts with ABI to do so.

12           39. Among its service offerings, ABI provides a service called  
13 “Compliance Fulfillment,” which purports to assist the employer in complying with  
14 the FCRA by automatically generating and mailing pre-adverse action notices to the  
15 consumer along with a copy of the consumer report under the employer’s letterhead  
16 whenever there has been an adverse adjudication by ABI based on the pre-  
17 determined criteria supplied by Ryder. See [http://www.americanbackground.com](http://www.americanbackground.com/vaddedservices.aspx?tab=2)  
18 [/vaddedservices.aspx?tab=2](http://www.americanbackground.com/vaddedservices.aspx?tab=2) (last visited on May 28, 2012).

19           40. Consumer reporting agencies routinely provide a similar service and  
20 many employers purchase it. Ryder could have easily and cost-effectively  
21 complied with the mandates of the FCRA by purchasing this service, but failed to  
22 do so.

23           41. Ryder knew or had reason to know that its conduct was inconsistent  
24 with published Federal Trade Commission (“FTC”) guidance interpreting the  
25 FCRA and the plain language of the statute.



**CLASS ACTION ALLEGATIONS**

42. Ryder's practices and procedures described herein affected and continue to affect Plaintiff and other consumers who have been subject to an adverse employment action on the basis of information in consumer reports.

43. Plaintiff asserts his claims in Counts 1 and 2 on behalf of a Putative Class defined as follows:

All natural persons residing in the United States who, within two years from the filing of this action, were the subject of a consumer report prepared at the request of Ryder for employment purposes and who were subject to an adverse employment action based on that report.

44. Numerosity: The Class is so numerous that joinder of all members is impracticable. Ryder regularly obtains and uses information in consumer reports to conduct background checks on prospective employees and existing employees, and frequently relies on such information, in whole or in part, as a basis for adverse employment action. Plaintiff is informed and believes that, during the relevant time period, Ryder failed to provide a pre-adverse action notice to thousands of employees and prospective employees. The numerosity of the proposed class satisfies the definition of the Putative class.

45. Commonality: There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. Those questions include:

(a) whether Ryder violated 15 U.S.C. § 1681b(b)(3)(A) by failing to provide pre-adverse action notice to consumers before taking adverse action in whole or in part based on a consumer report; and

(b) whether Ryder's violations were willful.

46. Typicality: Plaintiff's claims are typical of the claims of the Class, which all arise from the same operative facts and are based on the same legal theories. Ryder typically uses consumer reports to conduct background checks on employees and prospective employees. Ryder typically contingently hires these



1 employees prior to conducting background checks, and only orders background  
2 checks after it has been determined that employees are qualified for the position.  
3 Ryder routinely takes adverse action based in whole or in part on consumer reports,  
4 and denies employment to consumers who do not receive a “green” adjudication.  
5 Finally, Ryder typically does not provide pre-adverse action notices to these  
6 consumers prior to the taking of adverse action. The FCRA violations suffered by  
7 Plaintiff are typical of those suffered by other Putative Class members, and Ryder  
8 treated Plaintiff consistently with other Putative Class members in accordance with  
9 its standard policies and practices.

10 47. Plaintiff will fairly and adequately protect the interests of the Class.  
11 Plaintiff is committed to vigorously litigating this matter and has no conflict with  
12 the Class. Plaintiff has secured counsel experienced in handling civil rights and  
13 consumer class actions.

14 48. This action should be maintained as a class action pursuant to Rule  
15 23(b)(3) because the questions of law and fact common to Class Members  
16 predominate over any questions affecting only individual Class members, and a  
17 class action is a superior method for the fair and efficient adjudication of this  
18 controversy. The interest of Class Members in individually controlling the  
19 prosecution of separate claims against Ryder is small. Management of the Class  
20 claims will avoid inconsistent judgments and result in a more efficient use of  
21 judicial resources than resolving these same issues in many individual cases.

22 49. Ryder, solely or in combination with ABI, maintains records based on  
23 which all class members can be identified. These records also contain address  
24 information. Upon certification, Plaintiffs will send class notice via first class mail  
25 to all members of the class, such notices to be mailed to class members’ last known  
26 address as determined by comparing Ryder’s information with the National Change  
27 of Address database.

**FIRST CAUSE OF ACTION**  
**Violation of the Fair Credit Reporting Act**  
**15 U.S.C. §§ 1681b(b)(3)(A)**  
**(on behalf of Plaintiff and the Class)**

50. Plaintiff realleges and incorporates each of the foregoing paragraphs as though fully set forth herein.

51. Ryder used a “consumer report,” as defined by the FCRA, to take adverse employment action against Plaintiff and other members of the Putative Class.

52. Ryder violated the FCRA by failing to provide Plaintiff and other Putative Class members, prior to taking adverse action, with notice that adverse action would be taken in whole or in part based on a consumer report, along with a copy of the consumer report and a compliant description in writing of the rights of the consumer.

53. The foregoing violations were willful. Ryder acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other Class members under 15 U.S.C. § 1681b(b)(3)(A). The willfulness of Ryder’s conduct is reflected by, among other things, the following facts:

- a. Based on the plain language of the statute, legal advice provided by its own general counsel or outside employment counsel, and published FTC guidance, Ryder knew or should have known that its failure to provide pre-adverse action notice was unlawful;
- b. Moreover, based on the certification executed and memorialized by ABI and itself, Ryder explicitly acknowledged that it has the duty to provide a pre-adverse action notice as specified under the FCRA;
- c. Ryder could have complied with the statutory duty to provide a pre-adverse action notice either by sending the notice directly to the affected consumer job applicant, or by contracting with ABI to do so on its behalf;

1 d. Despite the clear notice of the law, full ability to comply, and ample  
2 opportunity, Ryder failed to adopt any measure which would have provided  
3 the required notice to Plaintiff and the Class.

4 54. Plaintiff and the Putative Class are entitled to statutory damages of not  
5 less than \$100 and not more than \$1,000 for each and every one of these violations,  
6 pursuant to 15 U.S.C. §1681n(a)(1)(A).

7 55. Plaintiff and the Putative Class are further entitled to recover their  
8 costs and attorney's fees, pursuant to 15 U.S.C. § 1681n(a)(3).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff seeks judgment in favor of himself and the proposed  
11 Classes:

12 1. That an order be entered certifying the proposed Class under Rule 23  
13 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to  
14 represent the Class;

15 2. That judgment be entered against Ryder and in favor of Plaintiff and  
16 Class members for statutory damages in the amount of not less than \$100 and not  
17 more than \$1,000 per violation per Class member, pursuant to 15 U.S.C. §  
18 1681n(a);

19 3. That judgment be entered against Ryder for punitive damages pursuant  
20 to 15 U.S.C. § 1681n(a)(2);

21 4. That the Court award costs and reasonable attorney's fees pursuant to  
22 15 U.S.C. § 1681n; and

23 5. That the Court grant such other and further relief as may be just and  
24 proper.

1 DATED: October 15, 2012

By: 

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19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby requests and demands a jury trial on all issues triable by jury.

22 DATED: October 15, 2012

NICHOLS & KASTER, LLP

25 By: 

E. Michelle Drake

# EXHIBIT 1



**Confidential**  
Risk Score Report

Ryder / Integrated Logistics of CA

Account: 87M2960 Case #: [REDACTED]  
 Employee 7583  
 Charged  
 Location  
 Code  
 Position Class A Driver  
 Title  
 Business Integrated Logistics  
 Unit  
 Recruiter's Email daniel\_e\_carroll@ryder.com  
 Address  
 Requisition Number 229  
 Position 1  
 Code  
 Type of driving experience required 1 Year  
 Recruiter's Name Daniel Carroll  
 Comments  
 User's SAP ID  
 External Posting  
 Advertised  
 Job Title  
 PrevEmploy 1  
 PrevEmploy 2  
 PrevEmploy 3  
 PreviousLicensePast3Yrs  
 Date Sent: May-12-2011  
 Applicant Name: [REDACTED]

**Results:**

Yellow

Information returned regarding the above referenced applicant falls outside the predetermined criteria.

**Reason:**

Criminal

**Comments:**

**Package:**

Social A la Carte(Social Locator)

ILCA - BG: Criminal(Criminal, Risk Scoring, Treasury Enforcement, US National Sex Offender Registry, Additional Criminal Searches)



## EXHIBIT 2

## Ryder Integrated Logistics of California

## On-Line Applicant Check Off List

Applicants Name

S.S.#:

Home Phone:

Cell Phone:

- 1 ☒ Application Received on: 4/29/11 With the following pages completed and attached:

- ☒ a. Application for Employment  
☒ b. Employment Record (2 pages)

Start Date:

Start Pay:

Code:

- 2 ☐ Call placed to the applicant requesting copies of the following on: \_\_\_\_\_



1. Commercial Driver License  
 2. Both sides of the driver's Medical Card  
 3. Social Security Card  
 4. Safety Performance History Records Request  
 5. Current Motor Vehicle Report (H-6) (pulled within 30 days)

- 3 ☒ Ryder paper application received on: 4/29/11

- 4 ☒ Application Screened by: [Signature]

- 5 ☐ Application E-mailed to Site Manager on: \_\_\_\_\_

- 6 ☒ Recruiter interview by: [Signature] on: 4/29/11 Results: PASS

- 7 ☐ Site Manager interview by: \_\_\_\_\_ on: \_\_\_\_\_ Results: \_\_\_\_\_

- 8 ☒ Road Test on: 4/29/11 Results: PASS (Pass/Fail)

- 9 ☐ Site Manager Authorization E-Mail Received on: \_\_\_\_\_ Results: \_\_\_\_\_

- 10 ☒ Contingent Letter presented/signed on: 4/29/11

- 11 ☒ Sent for Drug Screen/DOT Physical on: 4/29/11

- 12 ☒ Received results from DOT Physical on: 4/29/11 Results: COND.

- 13 ☒ Received drug screen results on: 5/3/11 Results: YES Initials: [Signature]

- 14 ☒ Sent to Backgrounds on: 4/29/11

- 15 ☒ Background complete on: 5/11/11 Results: PASS

- 16 ☒ Criminal History complete on: 5/12/11 Results: FAIL

- 17 ☐ Final Recruiting Manager review on: \_\_\_\_\_ By: \_\_\_\_\_

- 18 ☐ Job offer made on: \_\_\_\_\_ Start Date: \_\_\_\_\_

- 19 ☐ Orientation completed on: \_\_\_\_\_

- 20 ☐ Misc. NRRO ACCIDENT REPORT

- 21 ☐ FROM '08

- 22 ☐ FAILED CRIMINAL